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SENATE BILL 102

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Carlos R. Cisneros

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

RELATING TO WATER; PROVIDING PROCEDURES FOR PROSECUTING VIOLATIONS OF LAWS CONCERNING THE MISUSE OF WATER AND INTERFERENCE WITH EASEMENTS FOR OR ACCESS TO CERTAIN IRRIGATION DITCHES; CREATING AND INCREASING PENALTIES; PROVIDING FOR CIVIL REMEDIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 73-2-5 NMSA 1978 (being Laws 1933, Chapter 65, Section 1, as amended) is amended to read:

"73-2-5. DITCH OVER LAND OF ANOTHER-- EASEMENT-- RIGHT OF SERVICIENT OWNER-- PENALTY. --

A. Hereafter in all cases where there has been a continuous use of a ditch for the purposes of irrigation for five years, it shall be conclusively presumed as between the parties that a grant has been made by the owners of the land,

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1 upon which such ditch is located, for the use of the same and  
2 it is unlawful to interfere with that easement or prevent  
3 convenient access to the ditch by the owner of the dominant  
4 estate; provided that nothing herein contained shall be  
5 construed to prevent the owner of a servient estate from making  
6 any alterations or changes in the location of any ditch upon  
7 his land, so long as such [~~alternation~~] alteration or change of  
8 location shall not interfere with the use of or convenient  
9 access to such ditch by the owner [~~or owners~~] of the dominant  
10 estate [~~or estates~~].

11 B. A criminal complaint for a violation of the  
12 provisions of Subsection A of this section may be made by the  
13 district attorney or the mayordomo, commissioner or other  
14 person in charge of the ditch or acequia to the magistrate  
15 court in a county where the ditch or acequia is completely or  
16 partially located. A person convicted of violating the  
17 provisions of Subsection A of this section is guilty of a  
18 misdemeanor and on conviction, the defendant shall be fined not  
19 less than three hundred dollars (\$300) nor more than one  
20 thousand dollars (\$1,000) or sentenced up to ninety days  
21 imprisonment in the county jail, or both.

22 C. In lieu of a criminal complaint, the district  
23 attorney or the mayordomo, commissioner or other person in  
24 charge of the ditch or acequia may file a civil complaint  
25 seeking a civil penalty not to exceed five thousand dollars

1 (\$5,000) for knowingly, intentionally or willfully violating  
2 the provisions of Subsection A of this section.

3 D. The remedies provided for in this section shall  
4 not be construed as limiting the right of the party bringing  
5 the civil or criminal complaint from seeking restitution. In  
6 addition to the remedies provided in this section, the district  
7 attorney or the mayordomo, commissioner or other person in  
8 charge of the ditch or acequia may apply to the district court  
9 of the county where the ditch or acequia is completely or  
10 partially located or where the defendant resides for a  
11 prohibitory or mandatory injunction restraining any person from  
12 violating or continuing to violate the provisions of Subsection  
13 A of this section; provided, however, that the applicant shall  
14 not be required to post bond in seeking such injunction. "

15 Section 2. Section 73-2-64 NMSA 1978 (being Laws 1923,  
16 Chapter 81, Section 1) is amended to read:

17 "73-2-64. INTERFERENCE WITH DITCH--ILLEGAL WATER USE--  
18 PENALTY--FAILURE TO PROSECUTE--INJUNCTIVE RELIEF.-- [Any]

19 A. A person [not the owner or duly authorized  
20 representative of the owner of a water right in any community  
21 ditch of this state, or any such owner or representative, who]  
22 shall not, contrary to the order of the mayordomo or  
23 commissioner or other person in charge, cut, break, stop up or  
24 otherwise interfere with any community ditch or dam in this  
25 state, or any contra or lateral acequia thereof, or take or use

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1 water from the same contrary to such orders [~~shall be guilty of~~  
2 ~~a misdemeanor, and, on complaint made before the nearest~~  
3 ~~Justice of the Peace, a warrant shall issue for his arrest, as~~  
4 ~~in case of any other offense against the state~~].

5 B. A criminal complaint for violations of the  
6 provisions of Subsection A of this section may be made by the  
7 district attorney or the mayordomo, commissioner or other  
8 person in charge of the ditch or acequia to the magistrate  
9 court in a county where the ditch or acequia is completely or  
10 partially located. A person convicted of violating Subsection  
11 A of this section is guilty of a misdemeanor and on conviction,  
12 the defendant shall be fined [in a sum of] not less than  
13 [~~(\$10.00) nor~~] three hundred dollars (\$300) or more than  
14 [~~(\$50.00), and in default of the payment of said fine, shall be~~  
15 confined in the county jail for a period of not less than five  
16 nor more than thirty days. And] one thousand dollars (\$1,000)  
17 or sentenced for up to ninety days imprisonment in the county  
18 jail, or both.

19 C. In lieu of a criminal complaint, the district  
20 attorney or the mayordomo, commissioner or other person in  
21 charge of the ditch or acequia may file a civil complaint  
22 seeking a civil penalty not to exceed five thousand dollars  
23 (\$5,000) for knowingly, intentionally or willfully violating  
24 the provisions of Subsection A of this section.

25 D. The remedies provided for in this section shall

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1 not be construed as limiting the right of the party bringing  
2 the civil or criminal complaint from seeking restitution. In  
3 addition to the remedies provided in this section, the district  
4 attorney or the mayordomo, commissioner or other person in  
5 charge of the ditch or acequia may apply to the district court  
6 of the county where the ditch or acequia is completely or  
7 partially located or where the defendant resides for a  
8 prohibitory or mandatory injunction restraining any person from  
9 violating or continuing to violate the provisions of Subsection  
10 A of this section; provided, however, that the applicant shall  
11 not be required to post bond in seeking such injunction.

12           E. It is [~~hereby made~~] the duty of the mayordomo or  
13 other person in charge of any such ditch or acequia to  
14 prosecute in the name of the state [~~of New Mexico~~] or bring to  
15 the attention of the district attorney for the purpose of  
16 prosecution any violation of this [~~Aet~~] section whenever he  
17 [~~shall obtain~~] acquires knowledge thereof, and his failure so  
18 to do shall be deemed a misdemeanor [~~and~~]. On conviction  
19 thereof, he shall be fined in a sum not less than [~~(\$25.00)~~  
20 ~~nor~~] seventy-five dollars (\$75.00) or more than [~~(\$50.00)] five~~  
21 hundred dollars (\$500) or by imprisonment in the county jail  
22 for not less than ten [~~nor~~] or more than thirty days."